LYNDA BAGLEY DOYE

IBLA 82-430 Decided July 16, 1982

Appeal from the December 18, 1981, decision of the New Mexico State Office of the Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 42042.

Affirmed.

1. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

   The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, affidavits which serve only to declare the affiants' assumption, surmise, or deduction that such documents must have been included in an envelope received by BLM are inadequate to overcome the presumption where there is no direct evidence to establish that the documents were actually transmitted by the sender and BLM personnel disclaim receiving them.

2. Appeals -- Evidence: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Rules of Practice: Evidence

   Where, in the course of an appeal from the rejection of an oil and gas lease application for other reasons, the pleadings and evidence raise for the first time the question of the existence of an outstanding undisclosed interest in the application, the Board will not decide that issue, but in no event may a lease be granted the appellant unless and until the question is ultimately resolved in appellant's favor.

APPEARANCES: Waddell A. Biggart, Esq., Washington, D.C., for appellant;
John H. Harrington, Esq., Office of the Solicitor, Santa Fe, New Mexico, Departmental Counsel.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The simultaneously filed oil and gas lease application, NM 42042, submitted by Lynda Bagley Doye, was drawn with first priority for parcel NM-560 in the drawing conducted by the New Mexico State Office of the Bureau of Land Management (BLM) in August 1980.

On November 24, 1980, BLM called upon Doye to submit additional information in the form of responses to a questionnaire concerning the execution and filing of the application and the existence of any outstanding interests in the lease offer. Doye responded timely, indicating that the application had been filed on her behalf by a filing service, but that she was the sole party in interest, and that she had no agreement or option to transfer an interest to any other party or entity.

By its decision dated July 27, 1981, BLM then transmitted to Doye copies of the lease form and diverse special stipulations, and required that she execute all copies by her holographic signature and return them to BLM within 30 days of their receipt, together with her payment of the first year's lease rental in the amount of $961. The decision and enclosures were delivered to Doye's address of record on August 3, 1981.

The BLM case record shows that on August 19, 1981, BLM received one machine copy of the executed lease form, and a check for $961. No original copies of the lease form are contained in the case record, nor are any of the special stipulations.

[1] Following an inquiry by Doye regarding the status of her application, BLM by decision dated December 18, 1981, rejected the application, stating in part:

> [T]his offer, given serial number NM 42042 is hereby rejected for the following reason:
>
> The decision of July 27, 1981, stated: "You are allowed 30 days from receipt of this decision in which to execute and return all copies of the lease forms and stipulations. . ."
>
> Lynda Bagley Doye returned to the New Mexico State Office one machine copy of the lease on August 19, 1981, without stipulations being attached, and paid the first year's rental in the amount of $961,00. The machine copy of the lease is unacceptable as her signature was also a machine copy.
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> Regulations 43 CFR 3112.4-1(a) states: "Only the personal hand-written signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted . . . The executed lease agreement

shall be filed in the proper BLM office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease . . . constitutes the applicant's offer to lease." [Emphasis in original.]

Doye, acting pro se, filed a timely notice of appeal and statement of reasons. 1/ In her initial statement of reasons she argued that the submission of the machine copy of the lease form and the rental check demonstrated her intent to fulfill the requirements; suggested that the omission of the signed lease forms and stipulations was "[a]n apparent error by my administrative assistant"; and chided BLM for failing to notify her promptly of the mistake.

Subsequently, she retained an attorney, who filed a supplemental statement of reasons in which it is alleged that appellant did personally execute all the required documents by hand, and that these were placed in the same envelope with the check and the machine copy of the signed lease and machine copies of the five pages of special stipulations, which envelope was then mailed to BLM. This assertion is supported by the affidavits of appellant, her administrative assistant, Beth M. Abel, and Raymond A. Wilmoth, identified only as an employee of Doye Explorations, Ltd. No explanation is provided as to why they intended to send BLM machine copies of all the documents along with the executed originals.

Appellant's affidavit attests to the following facts:

1. The documents were received by her from BLM.

2. She holographically signed the lease form and each page of the stipulations.

1/ The decision rejecting the offer expressly instructed Doye in the procedure to be followed in the event an appeal was taken and provided her with copies of the regulations in 43 CFR Part 4.400-.402 and 43 CFR 4.411-.414, governing appeal procedures. The decision informed her that she must serve each adverse party named with a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs. The final paragraph of the decision states, "In the event of an appeal, the adverse party to be served with a copy of the appeal is: Keith S. Adams, 12 Linmoor Terrace, Lexington, MA 02173." The regulations also require service of the adverse party within 15 days, and that proof of such service be filed with this Board within 15 days thereafter, failing which, the appeal is subject to summary dismissal. 43 CFR 4.413. There is nothing to indicate that Doye served Adams, and nothing has been filed with this Board as proof of such service. When Doye retained counsel, her attorney did serve Adams with a copy of the supplemental statement of reasons and file timely proof of such service with this Board. Rather than inquire into this apparent procedural discrepancy (and perhaps confront an allegation that the Board lost Doye's proof of service of Adams), we will forego summary dismissal and address the appeal on its merits. In any event, Adams, the second drawee for this lease, has not responded.

3. Her administrative assistant, Beth M. Abel, "either mailed or supervised the mailing of said documents * * *."

4. Upon receiving BLM's notice rejecting the lease application for failure to submit the documents she searched her file on NM 42042 without finding the originals of the lease documents or stipulations.

Her affidavit then states:

> From the above facts, I can state under oath that the originals of the lease agreement and stipulations, both executed by hand by me on August 13, 1981, were indeed mailed in the same envelope as machine copies thereof and thereby must have been received by the Bureau of Land Management, New Mexico State Office on August 19, 1981, well within the thirty day period for compliance with 43 C.F.R. 3112/.4-1(a).

Clearly, the declaration "that the originals of the lease agreement and stipulations * * * were indeed mailed in the same envelope" is not reflective of appellant's direct personal knowledge. Rather, it represents merely her deduction, surmise, or assumption based on the other circumstances.

Nor are the other affidavits of greater probative worth. That of Beth M. Abel evinces no personal recollection of the actual mailing of the instruments in question. Her affidavit simply describes rather vaguely the routine office procedure for the handling of outgoing mail and states, "Such is then mailed either by me or by someone under my supervision and direction." She does, apparently, recall the assembling of the executed originals, the machine copies and the check, but adds, "These would then be placed in a single envelope mailed in our normal manner at the close of the business day * * *." (Emphasis added.) Again, this only reflects her knowledge of what would have transpired in a normal, routine course of events, but not a specific knowledge of what actually transpired in this instance.

The affidavit of Raymond A. Wilmoth attests to the fact that, following BLM's rejection of the lease application, he reviewed "our file on NM-42042" without finding the missing documents, and, further, that "as far as I am aware, no contents of said file in NM-42042 were removed, lost or destroyed."

As appellant has recognized, there is a legal presumption of regularity supports the official acts of public officers and the proper discharge of their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dan, 544 F.2d 1 (D.C. Cir. 1976); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). This rebuttable presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them has arisen in numerous appeals decided by this Board in cases where the timely filing of a document or remittance of a payment was essential to appellant's establishment or maintenance of a right. James G. Robinson, 60 IBLA 134 (1981), and cases therein cited. As we noted in H. S. Rademacher, supra at 156:

> The issue of what kind of evidence is sufficient to establish the filing of a document despite the absence from the appropriate file of such a document is one which has troubled this Board previously. See David F. Owen, 31 IBLA 24 (1977) (with dissenting opinion). This Board has found the inference of nonfiling drawn from the absence of the document from the case file to be effectively rebutted by a preponderance of evidence in those cases where appellant's assertion that the document was timely filed is supported by substantial corroborating evidence. Bruce L. Baker, * * * [55 IBLA 266 (1981)]; L. E. Garrison, [52 IBLA 131 (1981)]. In Bruce L. Baker, supra, the assertion that the document in issue was actually filed was supported by an affidavit setting forth in detailed chronological sequence the events surrounding the filing which affidavit in turn was corroborated by the dates of notarial seals and filing with the county recorder's office. In the L. E. Garrison case, supra, claimant's assertion that the document in issue had been filed with BLM was corroborated by an affidavit of a subsequent telephone conversation with a BLM employee who opened the mailing and acknowledged timely receipt of the required document. The phone conversation was in turn documented by a long-distance telephone bill reflecting the call. On the other hand, the Board has held that uncorroborated statements, even where placed in affidavit form, to the effect that a document was filed are not sufficient to overcome the inference of nonfiling drawn from the absence of the document from the file and the practice of BLM officials to handle properly filings of legally operative documents. See Lawrence E. Dye, [57 IBLA 360 (1981)] at 364; John Walter Starks, [55 IBLA 226 (1981)]; Metro Energy, Inc., 52 IBLA 369, 371 (1981); Charles J. Babington, 36 IBLA 107 (1978).

Although we do not doubt the credibility of these affiants, there is nothing in their affidavits which serves to establish that the missing documents were included in the envelope delivered to the BLM office where they were subsequently lost, rather than having been inadvertently lost, discarded, or misfiled in appellant's own office. Without sufficient probative evidence to rebut the presumption of official regularity, we must affirm the decision of BLM, for to do otherwise would prejudice the right of the junior offeror, whose priority attaches eo instante upon failure of the applicant having first priority to qualify. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, B.E.S.T., Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Because an oil and gas lease may be awarded only to the first qualified applicant, the requirements governing qualification of applicants in the simultaneous leasing procedure are mandatory, and strict compliance therewith is enforced. 30 U.S.C. § 226(c) (1976); Don C. Bell II, 42 IBLA 21 (1979), and cases therein cited.

[2] Finally, we are compelled to take note of another aspect of this matter which was not adressed in the decision below. As previously narrated herein, Doye filed her application as the sole party in interest, and subsequently reiterated that there were no other parties possessed of any outstanding interest in the application or the lease, if issued. However, her

address of record is that of "Doye Exploration, Ltd.," and all her correspondence concerning this matter utilizes the letterhead stationery of that firm. In her affidavit Doye states, "on August 17, 1981, a check drawn on Doye Oil and Minerals, Inc., doing business as Doye Explorations, Ltd., in an amount of $961.00 was issued." Beth M. Abel, identified as Doye's administrative assistant, also is employed at the corporation's address, as is Raymond A. Wilmoth, who identifies himself in his affidavit as "an employee of Doye Explorations, Ltd.," and who describes the "routine office procedures conducted in the offices of Doye Explorations," and refers to "our file on NM-42042." Failure to disclose the interests of other entities is cause for rejection of an oil and gas lease application. Coyer v. Easterday, 50 IBLA 306 (1980); aff'd, Coyer v. Andrus, Civ. No. C78-104K (D. Wyo. Mar. 5, 1981); 43 CFR 3102.7. While we make no finding here that Doye Oil and Minerals, Inc., d.b.a. Doye Explorations, Ltd., did, in fact, hold such an undisclosed interest, the fact that the advance rental for NM 42042 was paid by the corporation, and that employees of the corporation conducted the business relating to the application in the corporate office, together with the other indicia of corporate involvement, raises yet another issue of fact which would have to be resolved before this lease could be granted to appellant even in the event that this decision should be reversed upon judicial review. In such event it would also be necessary to resolve such subsidiary issues as whether Doye Oil and Minerals, Inc., and/or Doye Explorations, Ltd., also filed applications in the drawing for parcel NM-560, the corporation's qualifications, appellant's relationship to the corporation, etc. See Graybill Terminals Co., 33 IBLA 243 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge